

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5313 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHRI P.S.MEHTA

Versus

SHRI S.K.SHELAT, OFFICE OF THE IND.COMMR. & ORS.

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Appearance:

MRS KETTY A MEHTA for Petitioner

MR NN PANDYA for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/07/96

ORAL JUDGMENT

Heard learned counsel for the parties. The cause to give rise to this Special Civil Application filed by the petitioner is the action of the respondents of giving of promotions to his juniors under the order dated 16th December 1982, to the post of Senior Industries Inspector, and the petitioner's supersession therein.

2. The counsel for the petitioner stated that during the pendency of this Special Civil Application, the petitioner has already been promoted to the post of Senior Industries Inspector sometime in the year 1987-88, which position is not disputed by the counsel for the respondents. The main contention of the petitioner is that promotion has been given to the persons junior to the him vide order dated 16th December 1982.

3. In reply to this Special Civil Application, the respondents have justified the supersession of the petitioner on the ground that there were adverse remarks in his annual appraisal performance reports for the years 1979-80, 1980-81, and 1981-82 and punishment for withholding one grade increment was given under the order dated 6.1.79. Apart from this, the respondents have given out certain other adversities against the petitioner, but the counsel for the petitioner has admitted that in respect of these adversities, neither chargesheet was issued to the petitioner nor they have been adversely commented in his annual appraisal performance report. The counsel for the petitioner contended that adverse remarks for the aforesaid years were not communicated to the petitioner on the date on which his case was considered for promotion. These remarks were communicated vide memo dated 27th December 1982, i.e. even after filing of this Special Civil Application before this Court. The submission of the counsel for the petitioner is that non communicated adverse remarks could not have been taken into consideration to deny promotion to the petitioner. So far as the penalty of withholding of one grade increment is concerned, the counsel for the petitioner contended that it could not have been taken into consideration for the reason that the Departmental Promotion Committee takes into consideration only three years service record of the officer preceding the date of consideration for adjudging suitability for promotion. This penalty is beyond the three years' period of zone of consideration of service record for promotion.

4. It is true that the day on which the Departmental Promotion Committee met for consideration of the case of the petitioner for promotion, adverse remarks for the aforesaid years were not communicated to the petitioner. But these remarks have been communicated and the petitioner has already submitted a representation challenging these adverse remarks before appropriate authority and the said representation has not been disposed of so far. In these circumstances, only on the

ground that non communicated adverse remarks could not be taken into consideration, the petitioner cannot be ordered to be given promotion. In such cases, this Court will not be oblivious of the fact of communication of remarks may be after consideration of petitioner's case for promotion and filing of this petition. The counsel for the petitioner has not challenged the validity of these remarks also before this Court. I do not consider it to be appropriate to go on the validity of the adverse remarks of the aforesaid years for two reasons; firstly, that they have not been challenged by the petitioner by making necessary amendment in this Special Civil Application and secondly, the representation filed by the petitioner against those remarks is pending before appropriate authority.

5. In the result, this writ petition is allowed and the respondents are hereby directed that the representation filed by the petitioner against the adverse remarks for the years 1979-80, 1980-81 and 1981-82, be decided within a period of three months from the date of receipt of certified copy of this order. The respondents are further directed to place before the Departmental Promotion Committee, the result of the representation filed by the petitioner against the adverse remarks for aforesaid years. It is further made clear that in case the Departmental Promotion Committee takes into consideration only three years service record of the officer preceding the date of consideration for adjudging suitability of promotion, then the penalty of withholding one grade increment given to the petitioner under the order dated 6.1.79, may not be taken into consideration. Rule is made absolute in the aforesaid terms with no order as to costs.

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(sunil)